

YANKTON SIOUX TRIBE,	:	Order Docketing and Dismissing
Appellant	:	Appeal
	:	
v.	:	
	:	
ACTING DIRECTOR, OFFICE OF TRUST	:	Docket No. IBIA 98-47-A
RESPONSIBILITIES, BUREAU OF	:	
INDIAN AFFAIRS,	:	
Appellee	:	January 30, 1998

This is an appeal from a November 6, 1997, decision issued by the Acting Director, Office of Trust Responsibilities, Bureau of Indian Affairs (Director; BIA), concerning the request of the Yankton Sioux Tribe (Tribe) for litigation support funding. The Tribe states that it received the decision on December 16, 1997. 1/

According to the Director's decision, the Tribe's request for funds covered expenses incurred during the period November 1993 through October 1996. Citing 25 C.F.R. § 89.41(f), the Director stated: "Since the tribe's request for funding [is] for services that were previously rendered, [BIA] does not have the authority to provide attorney fees or litigation support funding."

Subsection 89.41(f) provides: "Payment of fees will not be allowed if such payment was not authorized before services were performed." In light of this provision, the Board issued an order directing the Tribe to show why the Director's decision should not be summarily affirmed.

1/ The Director's decision was not sent to the Tribe but, rather, to the Aberdeen Area Director. The Area Director transmitted it to the Superintendent, Yankton Agency, BIA, by memorandum of Dec. 4, 1997. The Superintendent then telefaxed it to the Tribe.

The Board has previously called attention to the need for compliance with 25 C.F.R. § 2.7(a) in issuing decisions concerning litigation support funding requests. See Walker River Paiute Tribe v. Acting Phoenix Area Director, 18 IBIA 109, 113 n.6 (1990).

Subsection 2.7(a) provides that "[t]he official making a decision shall give all interested parties known to the decisionmaker written notice of the decision by personal delivery or mail." Thus, the Director should have given the Tribe direct notice of his decision, rather than routing it through other BIA officials.

In its response, the Tribe states:

The Tribe's first request was on March 20, 1995, long before the bulk of the litigation was completed. The BIA requested support documents from the Tribe, which were provided by the Tribe. It appears that [BIA] delayed action on the request, for reasons unknown, but the result was that, while the litigation was on-going, and could not be halted because of the request for litigation funds, the decision on providing the funds was not made by the BIA until after the case was virtually completed. Thus, it was the BIA which prevented the Tribe from obtaining the funds before the case was completed.

Tribe's Response at 2-3.

The materials included with the Tribe's response show that its March 20, 1995, request for litigation support funding was reviewed by the Aberdeen Area Office and the Twin Cities Field Solicitor's Office, where it was found to need further documentation. The Tribe's materials further show that the Area Director returned the Tribe's request to the Superintendent on September 5, 1995, for the necessary documentation. The next document in these materials is an October 30, 1996, letter from the Tribe to the Superintendent, in which the Tribe stated that it was resubmitting its request for litigation support funding. Absent from the Tribe's materials is any document showing when)) presumably sometime between September 5, 1995, and October 30, 1996)) the Superintendent returned the funding request to the Tribe for further work.

The Tribe's October 30, 1996, letter requested funding for expenses incurred between November 17, 1993, and February 14, 1996. A supplemental letter dated November 6, 1996, requested additional funding for expenses incurred between February 1996 and October 31, 1996. At the time these letters were written, all of the services for which the Tribe sought funding had already been performed and thus were ineligible for funding. 2/

The Tribe has not shown that any services for which it sought funding remain to be performed. Thus, its funding request seems to fall squarely within the regulatory prohibition in 25 C.F.R. § 89.41(f). The Tribe argues, in essence, that it should be exempted from this prohibition because of BIA's delay in processing its funding request. The Board has no authority either to disregard the regulation or to waive it. Thus it lacks authority to grant the Tribe any relief in this case.

The Tribe may wish to apply to the Assistant Secretary - Indian Affairs for a waiver of the regulation. If it makes such a request, the Tribe should ensure that it includes precise information about the services for which it sought funding in its March 20, 1995, request and precise informa-

2/ Presumably, at least some of the services for which the Tribe sought funding in its Mar. 20, 1995, letter were future services. That is suggested, but not entirely clear, in the letter itself.

tion as to the date upon which the Superintendent returned that request to the Tribe for further work. 3/

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, this appeal is docketed but is dismissed for lack of authority to grant any relief.

Anita Vogt
Administrative Judge

Kathryn A. Lynn
Chief Administrative Judge

3/ This date is important because of the possibility that the delay during the period Sept. 5, 1995, through Oct. 30, 1996, was, at least in part, the fault of the Tribe. It appears unlikely, particularly in light of the Superintendent's apparently prompt transmission of other documents, that he waited over a year to return the Mar. 20, 1995, request to the Tribe for further work.

Any BIA delay subsequent to Oct. 30, 1996, while regrettable, is irrelevant to the Tribe's argument here because the Tribe did not seek funding for any services performed after Oct. 30, 1996.